

2 **SB 6379** - S AMD - 072

3 By Senators Kline and Johnson

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5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout RCW 4.84.340 through 4.84.360.

11 (1) "Adjudicative proceeding" means an adjudicative proceeding as
12 defined in RCW 34.05.010 and an administrative review pursuant to RCW
13 34.05.464. RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
14 act apply only to the following adjudicative proceedings:

15 (a) Cases conducted for the department of social and health
16 services, but excluding the division of child support and the division
17 of juvenile rehabilitation;

18 (b) Licensing cases conducted for the liquor control board;

19 (c) Business and professional licensing cases for the department of
20 licensing, but excluding motor vehicle franchise cases pursuant to
21 chapter 46.96 RCW;

22 (d) Business and professional licensing cases for the department of
23 labor and industries;

24 (e) Employer assessment and penalty cases conducted by the board of
25 industrial insurance appeals pursuant to chapters 49.17, 51.48, and
26 51.52 RCW for the department of labor and industries, except for
27 redetermination or reconsideration proceedings conducted by the
28 department; and

29 (f) Employer assessment and penalty cases conducted pursuant to
30 chapters 50.24 and 50.29 RCW for the employment security department.

31 (2) "Administrative review" means an adjudicative proceeding
32 pursuant to RCW 34.05.464.

33 (3) "Administrative tribunal" means an independent agency that
34 conducts adjudicative proceedings, as defined in RCW 34.05.010, as its
35 sole or principal duty, to: (a) Review decisions of another agency or

1 governmental unit; or (b) resolve disputes in which the tribunal is not
2 a party.

3 (4) "Agency" means any state board, commission, department,
4 institution of higher education, or officer, authorized by law to make
5 rules or to conduct adjudicative proceedings, except those in the
6 legislative or judicial branches, the governor, or the attorney general
7 except to the extent otherwise required by law.

8 (~~(+2)~~) (5) "Agency action" means agency action as defined by
9 chapter 34.05 RCW.

10 (~~(+3)~~) (6) "Fees and other expenses" includes the reasonable
11 expenses of expert witnesses, the reasonable cost of a study, analysis,
12 engineering report, test, or project that is found by the court,
13 presiding officer, or reviewing officer to be necessary for the
14 preparation of the party's case, and reasonable attorneys' fees.
15 Reasonable attorneys' fees shall be based on the prevailing market
16 rates for the kind and quality of services furnished, except that (a)
17 no expert witness shall be compensated at a rate in excess of the
18 highest rates of compensation for expert witnesses paid by the state of
19 Washington, and (b) attorneys' fees shall not be awarded in excess of
20 one hundred fifty dollars per hour unless the court, presiding officer,
21 or reviewing officer determines that an increase in the cost of living
22 or a special factor, such as the limited availability of qualified
23 attorneys for the proceedings involved, justifies a higher fee.

24 (~~(+4)~~) (7) "Judicial review" means a judicial review as defined by
25 chapter 34.05 RCW.

26 (8) "Presiding officer" means a presiding officer pursuant to RCW
27 34.05.425.

28 (9) "Qualified administrative party" means (a) an individual whose
29 net worth did not exceed two hundred fifty thousand dollars at the time
30 the initial petition for an adjudicatory proceeding was filed, or (b)
31 a sole owner of an unincorporated business, or a partnership,
32 corporation, association, or organization whose net worth did not
33 exceed one million two hundred fifty thousand dollars at the time the
34 initial petition for an adjudicatory proceeding was filed, except that
35 an organization described in section 501(c)(3) of the federal internal
36 revenue code of 1954 as exempt from taxation under section 501(a) of
37 the code and a cooperative association as defined in section 15(a) of
38 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party

1 regardless of the net worth of such organization or cooperative
2 association.

3 ~~((+5+))~~ (10) "Qualified judicial party" means (a) an individual
4 whose net worth did not exceed one million dollars at the time the
5 initial petition for judicial review was filed, or (b) a sole owner of
6 an unincorporated business, or a partnership, corporation, association,
7 or organization whose net worth did not exceed five million dollars at
8 the time the initial petition for judicial review was filed, except
9 that an organization described in section 501(c)(3) of the federal
10 internal revenue code of 1954 as exempt from taxation under section
11 501(a) of the code and a cooperative association as defined in section
12 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a
13 party regardless of the net worth of such organization or cooperative
14 association.

15 (11) "Qualified party" means a qualified judicial party or a
16 qualified administrative party.

17 (12) "Reviewing officer" means a reviewing officer pursuant to RCW
18 34.05.464.

19 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read
20 as follows:

21 (1) Except as otherwise specifically provided by statute, a court
22 shall award a qualified judicial party that prevails in a judicial
23 review of an agency action and a presiding officer or reviewing officer
24 shall award a qualified administrative party that prevails in an
25 adjudicative proceeding challenging an agency action, fees and other
26 expenses, including reasonable attorneys' fees, unless the court,
27 presiding officer, or reviewing officer finds that the agency action
28 was substantially justified or that circumstances make an award unjust.
29 A qualified party shall be considered to have prevailed if the
30 qualified party obtained relief on a significant issue that achieves
31 some benefit that the qualified party sought.

32 (2) The amount awarded a qualified party under subsection (1) of
33 this section shall not exceed twenty-five thousand dollars for the
34 total request for the combined proceedings, administrative hearing,
35 administrative review, or superior court proceedings. Subsection (1)
36 of this section shall not apply unless all parties challenging the
37 agency action are qualified parties. If two or more qualified parties
38 join in an action, the award in total shall not exceed twenty-five

1 thousand dollars. The court, presiding officer, or reviewing officer,
2 in its discretion, may reduce the amount to be awarded pursuant to
3 subsection (1) of this section, or deny any award, to the extent that
4 a qualified party during the course of the proceedings engaged in
5 conduct that unduly or unreasonably protracted the final resolution of
6 the matter in controversy.

7 (3) The chief administrative law judge, agencies whose actions are
8 subject to an award of fees and other expenses, and the board of
9 industrial insurance appeals are authorized to adopt rules to implement
10 RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this act. The
11 rules of the chief administrative law judge shall be adopted as part of
12 the model rules pursuant to RCW 34.05.250. These rules may include
13 reasonable requirements for notices of appearances by authorized
14 representatives, requirements for notices of intent to seek fees
15 pursuant to this section, and a schedule for hours, rates, or
16 limitations on amounts of fees and other expenses presumed reasonable
17 for the type of adjudicative proceeding. In addition, rules may set a
18 maximum total amount including all fees and expenses for specific types
19 of adjudicative proceedings.

20 **Sec. 3.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to read
21 as follows:

22 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
23 shall be paid within sixty days after an order becomes final by the
24 agency over which the party prevails from operating funds appropriated
25 to the agency (~~((within sixty days))~~) for administrative purposes.
26 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and
27 4.84.350 shall report all payments to the office of financial
28 management within five days of paying the fees and other expenses.
29 Fees and other expenses awarded by the court, presiding officer, or
30 reviewing officer shall be subject to the provisions of chapter 39.76
31 RCW (~~((and shall be deemed payable on the date the court announces the~~
32 ~~award))~~).

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.84 RCW
34 to read as follows:

35 When an agency has made an offer to participate in an alternative
36 dispute resolution process, the appellant must participate in good
37 faith or be precluded from applying for an award of attorneys' fees or

1 expenses pursuant to RCW 4.84.340 through 4.84.360 and sections 4 and
2 5 of this act.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 4.84 RCW
4 to read as follows:

5 Notwithstanding the provisions of RCW 4.84.350, no fees or other
6 expenses shall be awarded against an administrative tribunal for
7 actions taken solely as an adjudicative body.

8 NEW SECTION. **Sec. 6.** No legislative appropriation shall be made
9 to execute sections 2, 3, and 4 of this act."

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13 On page 1, line 1 of the title, after "fees;" strike the remainder
14 of the title and insert "amending RCW 4.84.340, 4.84.350, and 4.84.360;
15 adding new sections to chapter 4.84 RCW; and creating a new section."

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